

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RAMON IZQUIERDO,

Plaintiff,

v.

EASY LOANS CORP.,

Defendant.

Case No. 2:13-cv-01032-MMD-VCF

ORDER

(Def.'s Motion to Dismiss – dkt. no. 7)

I. SUMMARY

Before the Court is Defendant Easy Loans Corporation's ("Easy Loans") Motion to Dismiss. (Dkt. no. 7.) The Court has also considered Plaintiff Ramon Izquierdo's ("Plaintiff") opposition and Easy Loans' reply. For the reasons discussed below, the motion is denied.

II. BACKGROUND

This case arises out of alleged violations of the Fair Debt Collections Practices Act. The facts that follow are taken from the Complaint. Plaintiff incurred a financial obligation to First USA Bank, N.A. Chase (the "Creditor") for a credit card provided by the Creditor to Plaintiff for family, personal, or household purposes. (Dkt. no. 1 at ¶ 1.) Plaintiff defaulted on the debt in June 2006. (*Id.* at ¶ 17.) The Creditor sold, assigned, or transferred the debt to Easy Loans for collection. Alternatively, the Creditor employed Easy Loans to collect the debt. (*Id.* at ¶ 12.)

On November 12, 2012, Easy Loans sued Plaintiff in Las Vegas Justice Court ("Justice Court Complaint") attempting to collect the debt. (*Id.* at ¶ 14.) At the time Easy

1 Loans filed the Justice Court Complaint, Easy Loans knew or should have known that
2 both California and Nevada law time-barred the suit. (*Id.* at ¶ 19, 21.) Regardless, Easy
3 Loans brought the suit in an attempt to harass the Plaintiff into repaying a debt he was
4 no longer responsible to pay. (*Id.* at ¶ 23.)

5 On June 11, 2013, Plaintiff filed this suit alleging violations of the Fair Debt
6 Collections Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq., under multiple section of
7 the statute, including § 1692d, § 1692e(2, 5, 7, 10), and § 1692f(1). Plaintiff sought
8 actual and statutory damages under § 1692k(a)(1-2).

9 III. LEGAL STANDARD

10 On a 12(b)(6) motion, the court must determine "whether the complaint's factual
11 allegations, together with all reasonable inferences, state a plausible claim for relief."
12 *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys.*, 637 F.3d 1047, 1054 (9th Cir. 2011)
13 (*citing Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009)). "A claim has facial plausibility
14 when the plaintiff pleads factual content that allows the court to draw the reasonable
15 inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678
16 (*citing Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)).

17 When determining the sufficiency of a claim, "[w]e accept factual allegations in the
18 complaint as true and construe the pleadings in the light most favorable to the non-
19 moving party[; however, this tenet does not apply to] . . . legal conclusions . . . cast in the
20 form of factual allegations." *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011)
21 (citation and internal quotation marks omitted). "Therefore, conclusory allegations of law
22 and unwarranted inferences are insufficient to defeat a motion to dismiss." *Id.* (citation
23 and internal quotation marks omitted); *see also Iqbal*, 556 U.S. at 678 (*quoting Twombly*,
24 550 U.S. at 555) ("A pleading that offers 'labels and conclusions' or 'a formulaic
25 recitation of the elements of a cause of action will not do.'").

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1 **IV. DISCUSSION**

2 Plaintiff alleges that Easy Loans violated the FDCPA by filing a time-barred
3 lawsuit in an attempt to collect an alleged debt. Easy Loans argues that Plaintiff has
4 failed to state a claim under the FDCPA.

5 To state an FDCPA claim, a plaintiff must allege: (1) plaintiff is a consumer, (2)
6 defendant is a debt-collector, (3) defendant attempted to collect a consumer debt, and
7 (4) defendant violated a statutory provision in its collection activities. 15 U.S.C. § 1692.
8 Easy Loans does not challenge that plaintiff is a consumer or that Easy Loans attempted
9 to collect a consumer debt. Instead, Easy Loans' arguments focus on two issues: (1)
10 whether Easy Loans is a debt-collector and (2) whether Plaintiff has adequately alleged
11 violations of the statute.

12 **1. Debt-Collector**

13 Easy Loans points to the Justice Court Complaint and asks the Court to find that
14 Easy Loans is a "creditor, not a debt collection agency." (Dkt. no. 7, at 11.) Under the
15 FDCPA, "creditor" means "any person who offers or extends credit creating a debt or to
16 whom a debt is owed," however the definition of creditor explicitly does not include "any
17 person to the extent that he receives an assignment or transfer of a debt in default *solely*
18 *for the purpose of facilitating collection of such debt for another.*" 15 U.S.C § 1692a(4)
19 (emphasis added). Additionally, "debt collector" means "any person who uses any
20 instrumentality of interstate commerce or the mails in any business the principal purpose
21 of which is the collection of any debts, or who regularly collects or attempts to collect,
22 directly or indirectly, debts owed or due or asserted to be owed or due another." 15
23 U.S.C § 1692a(6).

24 As an initial matter, the fact that Easy Loans alleged in its own Justice Court
25 Complaint that it was a "creditor" is irrelevant. This is because whether Easy Loans is a
26 debt collector or creditor is a legal determination to be made by this Court in this action.
27 Moreover, taking the facts alleged in the Complaint as true, Plaintiff has alleged Easy
28 Loans was acting as a debt collector when it filed the Justice Court Complaint. Plaintiff

1 has alleged that the Creditor sold, assigned, or transferred the debt “to [Easy Loans] for
2 collection, or [Easy Loans] was employed by the Creditor to collect the Debt.” (Dkt. no 1
3 at ¶ 12.) This allegation removes Easy Loans from the explicit definition of “creditor” and
4 places it squarely within the definition of a “debt collector” by alleging Easy Loans was
5 assigned the debt solely to facilitate debt collection for the Creditor. Thus, Plaintiff has
6 adequately alleged that Easy Loans is a debt collector to satisfy the second element of
7 an FDCPA claim.

8 **2. Statutory Violations**

9 The Court finds that Plaintiff has adequately pled FDCPA violations. Specifically,
10 Plaintiff alleges that Easy Loans filed a time-barred lawsuit knowing full well that it had
11 no legal right to collect the debt and did so for the purpose of harassing Plaintiff. Thus,
12 the falsity is the charge that Plaintiff legally owed, or that Easy Loans had any right to
13 collect, the alleged debt. 15 U.S.C. § 1692d, e. The falsity related not only to the legality
14 of the collection activity, but also the amounts, because as Plaintiff alleges, no amount
15 was legally recoverable. *Id.* at § 1692e, f. This sufficiently states a claim under the
16 FDCPA. *See id.* at § 1692d, e, f.

17 Easy Loans asserts three arguments as to why Plaintiff has failed to plead
18 violations of the statute. These arguments are all tenuous.

19 First, Easy Loans argues it does not have adequate notice of the claims because
20 Plaintiff fails to provide the date or time of the alleged false misrepresentations. Easy
21 Loans seeks to impermissibly impose a heightened pleading standard on Plaintiff. Easy
22 Loans also ignores that the impetus behind Plaintiff’s claims was the filing of the Justice
23 Court Complaint. Therefore, Easy Loans is on notice of the misrepresentations in the
24 Justice Court Complaint and the date they were made, i.e. the date the Justice Court
25 Complaint was filed. Additionally, Easy Loans points to specific paragraphs in the
26 Complaint and argues that the allegations are legal conclusions not entitled to the
27 presumption of truth, and concludes that the claim should be dismissed. However, Easy
28 Loans’ reference to specific paragraphs containing legal conclusions ignores the factual

1 allegations contained in other paragraphs. This argument fails because when analyzing
2 the sufficiency of a complaint, the Court looks at the whole complaint, not single
3 paragraphs in isolation.

4 Second, Easy Loans argues that Plaintiff's failure to allege that "Easy Loans used
5 or threatened to use violence, used obscene language, advertised the debt, or
6 repeatedly called Plaintiff" dooms Plaintiff's Complaint. (Dkt. no 7 at 4.) However, Easy
7 Loans' argument fails because it does not consider that the few examples outlined in the
8 statute are non-exhaustive. See 15 U.S.C. § 1692d. Additionally, Easy Loans' reliance
9 on Sixth Circuit precedent to argue the filing of a debt collection lawsuit does not violate
10 the FDCPA is misplaced. The Ninth Circuit has held that "a complaint served directly on
11 a consumer to facilitate debt-collection efforts is a communication subject to the
12 requirements of" the FDCPA. *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027, 1031-32
13 (9th Cir. 2010). Therefore, when Easy Loans served the otherwise time-barred Justice
14 Court Complaint to facilitate debt-collection efforts, it became subject to the FDCPA.

15 Finally, Easy Loans argues that the Complaint's allegations undermine Plaintiff's
16 position that Easy Loans was time-barred from collecting the debt because there is a six-
17 year statute of limitations under Nevada Law for contract claims. Easy Loans argues that
18 because the debt was incurred under a Cardmember Agreement with the original
19 Creditor,¹ the six-year statute of limitations applies and the Justice Court Complaint was
20 timely. Plaintiff argues that Nevada's four-year statute of limitations for open accounts
21 applies.² Here, however, neither Nevada nor California law apply. The Cardmember
22 Agreement, which forms the basis of Easy Loans' contract claim in the Justice Court
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24 ¹Easy Loans requests the Court take judicial notice of the Cardmember
25 Agreement. Dkt. no. 8. Plaintiff does not oppose the request or challenge the authenticity
26 of the document. In fact, Plaintiff relies on the document to argue his position. Therefore,
the Court considers the Cardmember Agreement.

27 ²Specifically, the California statute of limitations for actions on open accounts for
28 goods or contracts is four (4) years, Cal. Civ. Pro. § 337, Nevada's statutes of the
limitations for actions on open accounts for goods is four (4) years, and for actions on
contract is six (6) years. See Nev. Rev. Stat. § 11.190.


1 Complaint, specifically contains a Delaware choice of law provision. (Dkt. no. 8, Ex. 2 at
2 3.) Under Delaware law, contract claims are subject to a three-year statute of limitations.
3 10 Del. C. § 8106. Thus, applying the Delaware statute of limitations, Easy Loans'
4 Justice Court Complaint was time-barred and this argument fails.

5 In sum, Plaintiff has adequately stated an FDCPA claim by alleging he is a
6 consumer, Easy Loans is a debt-collector, Easy Loans attempted to collect a consumer
7 debt, and did so by violating FDCPA statutory provisions in its collection activities.

8 **V. CONCLUSION**

9 It is therefore ordered that Defendant Easy Loans Corporation's Motion to Dismiss
10 (dkt. no. 7) is denied.

11 DATED THIS 18th day of March 2014.

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14 MIRANDA M. DU
15 UNITED STATES DISTRICT JUDGE
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